Evidence: Presumptions, Inferences and Shifting Burdens of Proof

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Let's Re-arrange

- Evidence
- Presumptions
- Inferences
- Shifting Burdens of Proof

- Evidence
- Burden of Proof
- Presumptions
- Shifting Burdens of Proof
- Inferences
- Findings

Burden of Proof

- Burden of going forward with proof
- Burden of persuasion

Burdens of Proof: Different Sizes

- Fair preponderance:
  More likely than not
- Clear and convincing
  Highly probable
- Beyond a reasonable doubt
  No Reasonable Doubt

“The moving party generally has the burden of proof in an administrative proceeding.”

This generally means that, in the absence of an operative presumption, the moving party has the burden of going forward as well as the burden of persuasion in an administrative hearing.

Who Has the Burden?

Statutes or regulations will assign it

State APA may assign it

Case law, generally, states whichever party wants to change the status quo has the burden of proof

Hearing Officers or ALJs can assign it in a hearing notice/or order if not otherwise established

Whose has the Burden of Proof?

"Whichever Party Wants to Change the Status Quo"

- 1. Issuance of a drainage permit
- 2. Professional license suspension
- 3. Denial of workers compensation
- 4. Fair administration of a alcohol test
- 5. Cessation of SNAP benefits
- 6. Change in educational services

A **PRESUMPTION** HAS THE PROCEDURAL CONSEQUENCE OF **SHIFTING THE BURDEN OF PROOF**

PRESUMPTION

- Overused term
- An irrebutable presumption is a substantive rule of law
- Rebuttable presumption is a procedural rule

By an other name

- Rebuttable Presumption
- Disputable Presumption
- Operative Presumption
- True Presumption

Presumption is Known by What is Does

- If FACT A (basic fact) then FACT B is presumed.
- Stated another way, FACT B is assumed when FACT A is established.
- Distinguished from an INFERENCE, when reasoning and logic leads to the deduction of the existence of FACT B from FACT A.

Presumptions:

- An additional fact the law allows the finder of fact to draw from the evidence, without additional evidence being introduced to support the inference.
- (Example: A presumption from the "common law" – child born during wedlock is husband's biological child.)

A PRESUMPTION HAS THE PROCEDURAL CONSEQUENCE OF **SHIFTING THE BURDEN OF PROOF**

Example: Employment Discrimination

- First: Claimant has burden of proving by the preponderance of the evidence a prima facie case of discrimination.
- Second: If Claimant shows a prima facie case, burden shifts to the Respondent "to articulate some legitimate, nondiscriminatory reason" for the employment decision.
- Third: If Respondent carries its burden, the burden of persuasion shifts back to the claimant to show the reason given by the employer was a pretext for intentional discrimination.

Example: Drainage Permit

- Proponent has burden to produce evidence and persuade the State Engineer that a permit should be granted.
- State Engineer required opponents of the project the burden to show a decrease in water quality, a prima facie case of adverse consequences.
- Proponent carried ultimate burden of persuasion that the project will not cause significant decrease in the water quality (despite possible procedural error).

Example: Alcohol Concentration Test

- Test record is presumed to show fair administration of the test.
- Evidence showing the approved method was not followed negates the presumed fact.
- Fact-finder then may draw reasonable inferences from the evidence that the requirement has been met.

Findings of Fact

- In reviewing an administrative agency's **findings of fact**, the appellate court does not make independent findings of fact or substitute its judgment for that of the agency.
- In an administrative proceeding, the administrative agency resolves conflicts of evidence and weighs the credibility of witnesses.
- Berg v. North Dakota State Board of Registration, 2018 ND 274

Fact-Finder

- **A fact-finder can draw reasonable inferences from the evidence.**
- Nelson v. Director, N.D. Dept of Transp., 1997 ND 81, ¶ 11, 562 N.W.2d 562

CONNECT
THE DOTS

Example: Alcohol Concentration Test

- Fair administration of an Intoxilyzer requires a 20-minute waiting period.
- Evidence shows test operator did not observe subject for 20 minutes.
- Yet, fact-finder may draw reasonable inferences from the evidence that the 20-minute requirement has been met.

Drawing Reasonable Inferences

- If a fact-finder can draw reasonable inferences from the evidence and conclude the subject could not have eaten, drank, or smoked, the 20-minute wait requirement has been met.
- Mees v. N.D. Dep't of Transp., 2013 ND 36, ¶s 10-16, (relying on Johnson v. N.D. Dep’t of Transp., 2004 ND 59, ¶ 11, 676 N.W.2d 807)

1. Johnson was not “continuously” observed for twenty minutes prior to the collection of the breath sample,
2. Johnson was handcuffed behind his back and who had remained in police custody,
3. Johnson could not have had anything to eat, drink, or smoke during that time frame.
4. “The hearing officer relied on the officer’s testimony to make the reasonable inference that the twenty-minute wait period was ascertained.”

Johnson, 2004 ND 59, ¶ 18, 676 N.W.2d 807.

What is a REASONABLE INFERENCE?

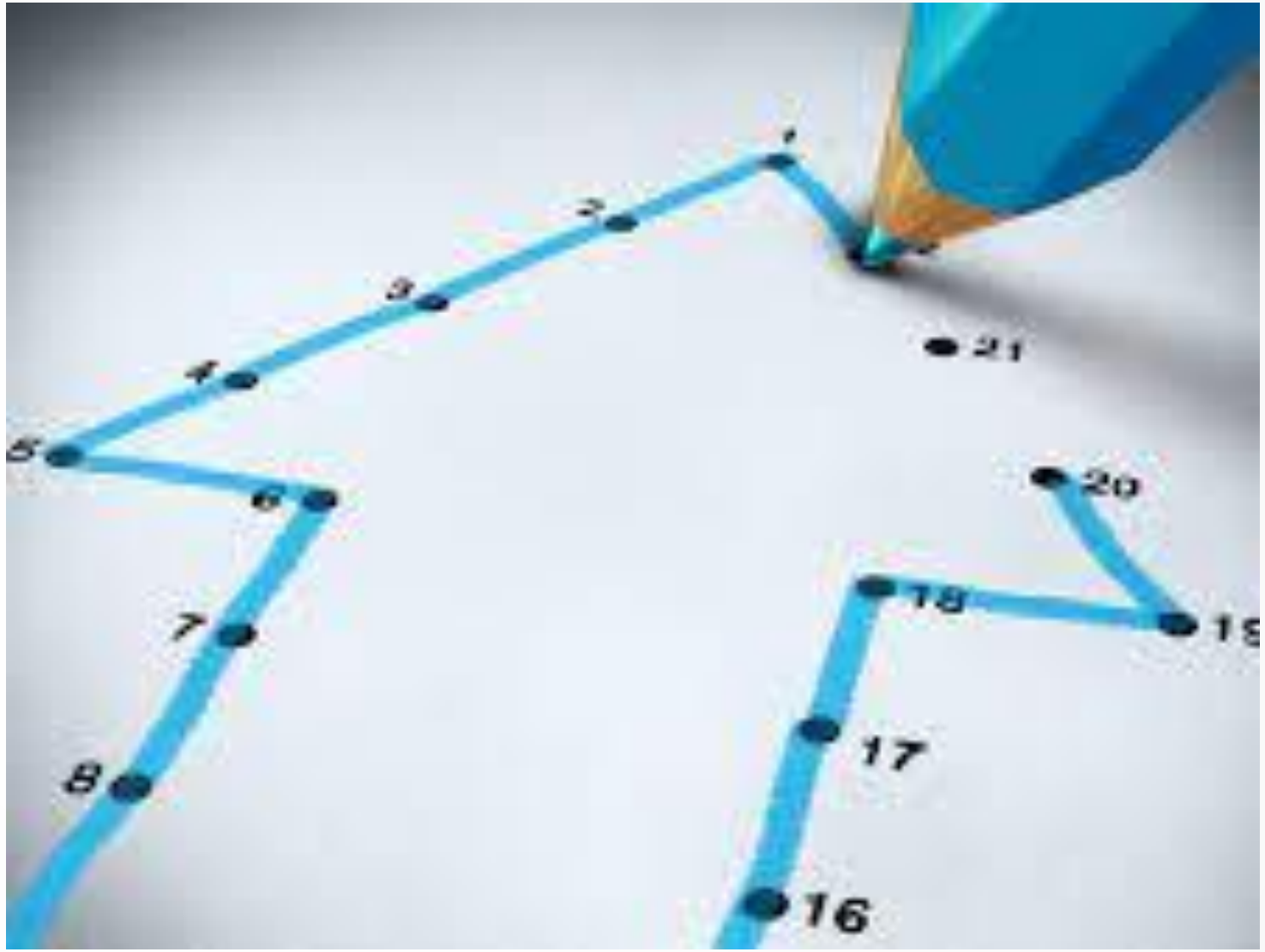
The reasonable-inference rule is a principle that allows a fact-finder to use their **common sense** and **draw logical conclusions** from the evidence presented.

To Infer or To Draw an Inference

- Finding of a fact, not through direct eye-witness evidence, but logic and reasoning from conclusions drawn from other established facts.

Reasonable Inferences

- Common Sense
- Drawing Logical Conclusions
- Connecting the Dots



Drawing an Adverse or Negative Inference

- In civil case, when one party fails to present evidence that is known to exist, or to produce a witness that would have knowledge of the facts, or to testify regarding the matter, the failure to offer such evidence implies that the evidence, if it had been presented, would <u>not</u> be favorable to the party.

QUESTIONS?
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